

IN THE COURT OF APPEAL OF SEYCHELLES

Reportable

[2022] SCCA 65 (16 December 2022)
SCA 47/2020
(Appeal from CS 120/2019)

In the matter between

H. Savy Insurance Co. Ltd
(rep. by Mr. S. Rajasundaram)

Appellant

and

Leon Mondon

1st Respondent

Micheline Georges
(rep. by Mr. Bernard Georges)

2nd Respondent

Neutral Citation: *H. Savy Insurance Co. Ltd v Mondon and Anor* (SCA 47/2020) [2022]
SCCA 65 (Arising in CS 120/2019)
(16 December 2022)

Before: Fernando President, Tibatemwa-Ekirikubinza JA, Andre JA

Summary: Appeal against the award of SCR 215,000.00 as compensation for injury and loss suffered by the 1st Respondent in a road collision.

Heard: 1 December 2022

Delivered: 16 December 2022

ORDER

Appeal dismissed.

JUDGMENT

FERNANDO, PRESIDENT

1. The Appellant (2nd Defendant before the Supreme Court) has appealed against the judgment of the Supreme Court wherein the 1st Respondent (Plaintiff before the Supreme Court) was awarded a total sum of SCR 215,000.00 as compensation for injury and loss suffered by him when he was hit by a vehicle driven by the 2nd

Respondent (1st Defendant before the Supreme Court), when the 1st Respondent was riding his motorcycle on 5th September 2014. The defence had been filed by the Appellant as the insurer of the 2nd Respondent. At the hearing before the Supreme Court, Counsel for the Appellant had submitted that liability was not being contested but only the quantum of damages sought by the Plaintiff, now the 1st Respondent before this Court.

2. The 1st Respondent had claimed SCR 100,000.00 for corporeal loss and residual disability, SCR 200,000.00 for pain and suffering and loss of amenities of life, SCR 33,530.00 for treatment including travel expenses for treatment, and SCR 100,000.00 for future medical expenses totaling a sum of SCR 433,530.00 with interest.
3. The award of SCR 215,000.00 to the 1st Respondent had been as follows: SCR 80,000.00 for injury, SCR 1000.000.00 for pain and suffering, SCR 5,000.00 for travel expenses and SCR 30,000.00 for any additional ancillary expenses.
4. The Appellant has raised the following grounds of appeal:
 - 1) “The learned Judge failed to take into consideration of the 1st Respondent’s (Plaintiff) admission that there was no fracture to his leg. The learned Judge failed to justify the award of SR80,000.00, given the admission of the 1st Respondent (Plaintiff) that there was no fracture; also in the absence of proper medical proof and or evidence of any medical expert, thus the award of SR80,000.00 is arbitrary and not proportional to the minor injuries of the 1st Respondent (Plaintiff).
 - 2) The learned Judge erred in her findings while awarding SR100,000.00 for pain and suffering and loss of amenities in the clear absence of evidence to support such sum while the 1st Respondent has not adduced any satisfactory evidence for the learned Judge to equate the award of SR100,000.00. In the respectful submission of the Appellant, the award of SR100,000.00 is also arbitrary and lack of any legal justification.
 - 3) As regards the “future medical expenses” the award of SR30,000.00 is highly unjustifiable while the 1st Respondent has not produced any basic medical details that his condition warrants future medical expense; it is just for the sake of awarding a sum on this heading, the learned Judge, without any basic justification awarded the sum of SR30,000.00 purely on surmise.
 - 4) The learned Judge has overlooked the prejudiced evidentiary value of the witness supporting the transport claim of the 1st Respondent (Plaintiff) and

lack of any basic supporting evidence to justify the claim of transport expenses and the award of SR5,000.00 is thus unjustified.”

By way of relief the Appellant had sought that the judgment is set aside, reversed and suitably modified in accordance with the nature of the injuries sustained by the 1st Respondent, the moral damages and other awards to be ascertained and payable.

5. The 1st Respondent testifying before the Court had stated after the collision on 5th September 2014, he was taken in an ambulance to the Anse Royale hospital and he had to be in dressings placed on his injuries for three months. For the past six years since the accident, he has had a persistent injury where his ankle remains swollen and painful when he stands. He had said that he cannot work as the ankle swells and the bone becomes painful. He had been in and out of the hospital for MRI, X-Ray, CT scans and acupuncture and will have to do so in the future. According to the medical report **P4** produced at the trial, without objection from the defence: *“The MRI showed anterior process calcaneal fracture associated with stress related marrow edema of the talus and subtalar ligaments spring edema and partial spring deltoid ligament”*. A fracture of the calcaneus, or heel bone, can be a painful and disabling injury. It had been stated in P4 that *“Mr. Mondon (1st Respondent) was referred to the orthopedic specialist at the outpatient department (OPD) on 04.12. 2014 with complain of pain and swelling of the left ankle joint after sustaining trauma 3 months previously. He was seen by the orthopedic specialist on 07.01.2015 at the OPD where he was complaining of pain in the left ankle and right knee, not improving on physiotherapy...At his next review on 11.03.2015 he was still having the same complaints. He was given an appointment for MRI of the right knee and left ankle joints. Mr. Mondon was last reviewed by the orthopedic specialist on 15.10.2015 where he was still having the same complaints. He was given an appointment to see Dr. Abdel (consultant orthopedic surgeon)”*. The learned Trial Judge had noted in the judgment that it was obvious to see the 1st Respondent’s limp and swollen ankle, even on the day of the trial and that it was clear that the injury had not healed and required further treatment. His son-in-law, Mr. Sheldon Morel, had helped him with the transport since his accident. He had said that prior to the accident he had been gainfully employed as a panel beater and now he has to depend on his monthly social security payment. He had not accepted an offer of settlement by the Appellant for SCR 35,000.00. He had denied that he was exaggerating the claim.
6. Mr. Sheldon Morel had confirmed that he took the 1st Respondent on numerous occasions to the hospital and to see his lawyer. There would have been several trips back and forth. They were from Baie Lazare to Victoria or Baie Lazare to

Anse Royale and it costed him SCR 33,350.00. according to records he had maintained. 1st Respondent had told him that he would be paid when his claim has been settled.

7. Mr. K. Furneau, the Assistant Claims Manager for the Appellant, had accepted liability for the accident. He had said that he had received a medical report from the 1st Respondent and according to that, the 1st Respondent had only sustained minor injuries and refused to accept the claim of SR 433,530.00. It is clear from the evidence elicited from the cross examination of Mr. Furneau, that the Appellant had been making random offers of settlement to the 1st Respondent, without any seriousness, at first SCR 5,000.00, then SCR 25,000.00 and finally SCR 35,000.00. The Appellant's offer of SCR 5,000.00 was on the basis of the 1st Respondent's medical report which indicated that he had only minor injuries. The third offer of SCR 35,000.00, he said, was on humanitarian grounds. When the third offer of SCR 35,000.00, was made there was no further evidence produced to the Appellant since the first offer of SCR 5,000.00. As pointed out by Counsel for the 1st Respondent (Plaintiff before the Supreme Court) humanitarian grounds had not prompted the Appellant when the Appellant first made its first offer of SCR 5,000.00. He had said that he was not aware that the 1st Respondent had received a calcaneal fracture until the time of the trial, as he had not been provided with any medical reports. He had said that his offer would change in view of the information about the fracture, but would not exceed SCR 50,000. In re-examination it had been brought out that in March 2016 the 1st Respondent's Attorney had by letter stated that they will consider SCR 100,000.00 by way of a settlement. But that was more than 4 years before the 1st Respondent testified in Court, 3 years before the filing of the plaint by the 1st Respondent and the 1st Respondent becoming aware of the calcaneal fracture referred to in P4. The 1st Respondent is 58 years old and had been in pain, according to observations of the Trial Judge, when he testified in Court.
8. Ground (1) fails and is dismissed in view of the contents of the medical report P4 referred to at paragraph 5 above. Ground (2) fails in view of the uncontradicted evidence of the Appellant regarding pain suffered by him, contents of the medical report P4, and the observations made by the Trial Judge at the trial and referred to at paragraph 5 above. The unchallenged evidence of Mr. Sheldon Morel that he took the 1st Respondent on numerous occasions to the hospital shows that the 1st Respondent was unwell and in pain and was unable to get about on his own. In my view there is no need for a doctor's evidence to confirm that a person is in pain. As regards ground (3), it is indeed a fact that could not be ignored that that certain expenses will necessarily be involved in the treatment of the 1st Respondent in the

future, because even on the date of the trial as observed by the Trial Judge the injury had not healed. As stated earlier a fracture of the calcaneus, or heel bone, can be a painful and a disabling injury. It is for that reason that out of SCR 100,000.00 claimed, a sum of SCR 30,000 had been awarded. In my view one need not produce medical details that his condition warrants future medical expenses on a matter like that. I therefore dismiss ground (3). The learned Trial Judge had accepted that the 1st Respondent had to be transported to and fro for treatment and that would have necessarily involved expenses and out of a SCR 33,530.00 claimed, awarded a sum of SCR 5,000.00. Although medical facilities are provided free of charge in Seychelles, transportation to and fro to the hospital are not provided in circumstances like this. I therefore dismiss ground (4).

9. It is not that the learned Trial Judge had picked up figures from the air in awarding damages. She has carefully analyzed the evidence, accepted what needs to be accepted, while rejecting certain evidence that had not been substantiated by documentary proof. I am of the view that Insurance Companies should be more reasonable when considering claims, especially in areas where there is a real difficulty in proving matters, such as pain and future medical expenses. This is a case where the learned Trial Judge had accepted the evidence of the 1st Respondent and also believed that he was not exaggerating. She had at paragraph 18 of her judgment taken into consideration previous awards made by the Court in relation to ankle and leg injuries. It is trite law that an appellate court to interfere with an award of compensation made by the Trial Court, it should be clear that the award made is wrong in principle and manifestly excessive, taking into consideration the evidence and the circumstances of the case. An appellate court should not substitute its own judgment of what it considers appropriate compensation, except for the above stated reasons.

10. I therefore dismiss the appeal with costs to the 1st Respondent.

Fernando President

I concur:

L. Tibatemwa-Ekirikubinza JA

I concur:

S. Andre JA

Signed, dated and delivered at Ile du Port on 16 December 2022.